

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Willie BURRUS 227-78-4347

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2517

Willie BURRUS

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701, 5.607.

By an order dated 7 August 1987, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, revoked Appellant's Merchant Mariner's Document upon finding proved the charge of misconduct. The specification supporting the charge of misconduct alleged that Appellant, while serving under the authority of his above-captioned document aboard the USNS ALTAIR, did, while the vessel was at anchor on 6 April 1987, wrongfully assault and batter a member of the crew with his fists and a broken plate.

The hearing was held at Norfolk, Virginia, on 5 May 1987.

Appellant appeared pro se at the hearing and entered a response of deny to the charge and specification. The Investigating Officer presented seven exhibits which were admitted into evidence and produced the testimony of seven witnesses. Appellant testified in his own behalf.

The order revoking appellant's document was issued in writing by the Administrative Law Judge on 6 May 1987. The record does not indicate when the order was served on appellant. However, Appellant's Notice of Appeal, Addendum and Brief, and Request for Transcript were received by the Administrative Law Judge on 1 June, 1987. Appellant's request for an extension of time in which to file a brief and second request for a transcript were received by the Administrative Law Judge on 29 June, 1987, and the record indicates that the Decision and Order was served on appellant on that date.

On 26 July 1987, the Chief, Marine Investigation Division (G-MMI) directed the Investigating Officers to prepare and forward a hearing transcript to Appellant, at government expense. A review of the entire record shows no evidence that a transcript was ever provided to Appellant as directed.

On 24 October 1990, Appellant's appeal was again forwarded to the Chief, Maritime and International Law Division (G-LMI) with a request that it be terminated because Appellant failed to perfect his appeal. Termination, however, could not be effected due to the absence of the transcript of the proceedings. Accordingly, this matter is properly before the Commandant for review.

FINDINGS OF FACT

Except to find that there was jurisdiction in this case, the findings of fact need not be discussed.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Due to the disposition of this case, the bases of appeal need not be considered.

Appearance: Appellant, pro se.

OPINION

Under 46 C.F.R. 5.703(c), when a transcript is requested by the appellant, the appellant has until 60 days after receipt of the transcript in which to file his appeal. Under this regulation, Appellant has not failed to perfect his appeal because he was never provided a copy of the transcript, as requested.

The regulations governing these proceedings state that "[t]he hearing transcript, together with all papers and exhibits filed, shall constitute the record for decision on appeal."

46 C.F.R. 5.701(b). Where drawings that formed the basis of conflicting testimony were omitted from the record and thus provided grounds for dismissal of the charge and specifications on appeal, it was held that "[o]missions from a record of hearing of a substantial nature, which relate to significant matters in the proceeding, effectively preclude meaningful review." Appeal Decision 2453 (WEDGEWORTH). Like the drawings in that case, the absence of a transcript in this case is an omission of a "substantial nature." "In the absence of the transcript of the hearing, there is no sufficient legal basis upon which to affirm the findings and order of the Administrative Law Judge." Appeal Decision 2399 (LANCASTER); Appeal Decision 2394 (ANTUNEZ).

In a case where a transcript was not received by the Appellant until more than a year and a half after his request, it was held that "[t]he failure to provide Appellant with his requested transcript in a reasonable time requires me to nullify the proceedings in this case, whatever the merits of the matter may be." Appeal Decision 1835 (MURRAY).

In the case herein, the preparation and transmittal of the transcript was ordered over two years ago. The absence of the transcript, under these circumstances, is inexplicable and inexcusable.

#### CONCLUSION

Because effective appellate review is impossible based on this record, and because Appellant was not provided with a copy of the

transcript as he requested, and as ordered, the charge and specification must be dismissed and the Administrative Law Judge's order vacated.

#### ORDER

The decision and order of the Administrative Law Judge dated 7 August 1987 at Norfolk, Virginia is VACATED. The charge is DISMISSED with prejudice.

/S/  
MARTIN H. DANIELL  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D.C. this 6th day of February, 1991.

\*\*\*\*\* END OF DECISION NO. 2517 \*\*\*\*\*